

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FELIPE SANCHEZ MONTES,

Defendant.

Case No. 3:99-cr-00036-HRH-14

ORDER DENYING
SUCCESSIVE PETITION

On March 17, 2008, Felipe Sanchez Montes filed a motion under 28 U.S.C. § 2255, challenging his January 24, 2000, judgment of conviction and sentence.¹ Mr. Montes, however, previously filed a § 2255 motion in this Court, which was denied.² Under 28 U.S.C. § 2244(a):

No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

¹ See Docket Nos. 347, 348, 683.

² See Docket Nos. 591 (§ 2255 motion filed 3/21/05), 594, 595 (3/29/05, dismissal), 605 (3/29/05, notice of appeal), 616 (9th Circuit's 8/22/05, denial of certificate of appealability).

Section 2255 explains that:

A second or successive petition or motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain

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(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.³

Under 28 U.S.C. §§ 2244(a) and 2255, the Court will not consider this successive § 2255 motion without first receiving authorization from the Court of Appeals for the Ninth Circuit.⁴

IT IS HEREBY ORDERED:

Mr. Montes's § 2255 motion is DENIED without prejudice to re-filing with the permission of the Court of Appeals for the Ninth Circuit.

DATED this 17th day of April, 2008, at Anchorage, Alaska.

/s/ H. Russel Holland, Judge
United States District Court

³ 28 U.S.C. § 2255(h).

⁴ Mr. Montes is cautioned that, as he has previously been told, there is a one-year limitations period for filing a motion under § 2255. See *Clay v. U.S.*, 537 U.S. 522 (2003); *United States v. Schwartz*, 274 F.3d 1220, 1223 (9th Cir. 2001).